

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On Its Own Motions)	
)	No. 09-0592
)	
Adoption of 83 Ill. Adm. Code 412 and 453)	

**VERIFIED SURREPLY COMMENTS OF
THE ILLINOIS COMPETITIVE ENERGY ASSOCIATION**

The Illinois Competitive Energy Association (“ICEA”),¹ by and through its counsel, DLA Piper LLP (US), respectfully submits the following surreply comments in the above captioned proceeding regarding the Staff of the Illinois Commerce Commission (the "Commission") First Notice Rules for 83 Illinois Administrative Code Part 412 and 453 Rules ("Staff Proposed Rules" or “Proposed Rules”). Specifically, ICEA responds to certain issues raised by Staff’s Corrected Verified Reply Comments ("Staff Reply Comments") dated April 23, 2010. ICEA also responds to certain issues raised for the first time in the Verified Reply Comments of the Citizens Utility Board and People of the State of Illinois ("CUB/AG Reply Comments”) dated April 22, 2010; and the Verified Reply Comments of the Retail Energy Supply Association ("RESA Reply Comments") dated April 22, 2010. ICEA notes that a number of issues raised in the verified reply comments were issues ICEA had already addressed either in its Initial Verified Comments and/or in its Verified Reply Comments.

Unless otherwise noted herein, ICEA reaffirms the positions taken in its Verified Initial Comments dated March 4, 2010 and its Verified Reply Comments dated April 22, 2010. In addition, failure to address or comment upon an issue raised for the first time by other

¹ The comments expressed in this filing represent the position of ICEA as an organization but may not represent the views of any particular member of ICEA.

participants in the verified reply comments should not be interpreted as either acceptance or rejection of that issue by the ICEA. ICEA reserves the right to comment upon any such issues in this proceeding at any appropriate point in the future.

COMMENTS AND RECOMMENDATIONS

A. Section 412.10 Definition of "Complaint" (And Related Change to Section 412.320(3))

Staff accepted part of ICEA's recommendation with regard to the definition of complaint but rejected ICEA's proposed insertion of the phrase "by the Commission" because, according to Staff's Reply Comments, Staff does not want the definition of "complaints" contained in Part 412 to be interpreted as referring only to formal complaints. (See Staff Reply Comments at 4.) That was not ICEA's intent and ICEA is agreeable to Staff's current wording for the definition of "complaint" set forth in its Reply Comments.

The rejected phrase "by the Commission" addressed a concern of ICEA's that the complaint reporting section of the rule be limited to complaints (formal or informal) received by the Commission. To that end, ICEA respectfully recommends the following change to Section 412.320 (3):

Disclosure of RESs' level of customer complaints. The Commission shall, on at least a quarterly basis, prepare a summary of all formal and informal complaints received by it and publish ~~it~~ such summary on its web site. The summary shall be in an easy-to-read and user friendly format.

B. Section 412.10 Definition of "Do Not Market List"

Staff agrees with ComEd's proposal to add a definition of "Do Not Market List" and proposes the following definition:

"Do Not Market List" means a list of names, addresses and/or phone numbers of customers who contacted the electric utility to avoid any marketing or soliciting from a RES.

(Staff Reply Comments at 4.)

ICEA reiterates that it does not believe that a definition of "do not market list" is necessary but if one is used in the rule, ICEA respectfully suggests it should be broad enough to allow for future revision and refinement. (See ICEA Reply Comments at 20.) Towards that end, ICEA respectfully suggests that the definition proposed by Staff be replaced in its entirety by the following:

Do Not Market List” means a list maintained by the electric utility of customers that have contacted the electric utility and asked not to be marketed to by RESs. Customers seeking to be placed on an electric utility's "do not market list" shall be given the option to choose among different marketing channels they might desire to continue to keep open in order to learn about RES offers (i.e. direct mail, telephone, in-person solicitation). Customers on the electric utility's "Do Not Market List" shall be able to remove themselves from the list or change their permissible marketing channel selections without restriction. The electric utility's "Do Not Market List" shall contain at a minimum the customer's name, service address and if applicable the customer's phone number.

ICEA also has a concern with regard to customers who sign up for the list and subsequently move within the utility's service territory or are otherwise assigned a new account number. For these customers, depending on how the electric utility maintains its list, customers may need to be reminded that a move or new account status may require a new request from the customer to be added to the list.

C. Section 412.10 Definition of "Small Commercial Customer"

Section 16-102 of the Illinois Public Utilities Act sets forth the definition of “small commercial retail customer,” which means those nonresidential retail customers of an electric utility consuming 15,000 kilowatt-hours or less of electricity annually in its service area.” (220 ILCS 5/16-102.) Accordingly, ICEA disagrees with Staff that the Commission must "decide the proper definition of small commercial customer in this Docket . . ." (Staff Reply Comments at 10.) The proper definition of small commercial customer has already been decided by the General Assembly.

ICEA believes that the issue of where to draw the "right of rescission" cut off line from a *public policy* perspective has never really been at issue. ICEA is not aware of any party advocating to obtain rescission rights for commercial and industrial customers with usage greater than 15,000 kilowatt-hours annually. Rather, the issue before the Commission is how to effectuate this right of rescission for small commercial customers in the face of electric utility claims that providing notice to small commercial customers of their right to rescind would be "difficult and/or costly". (Staff Reply Comments at 10.) ICEA agrees with Staff that however the Commission decides this issue, the electric utilities will have to conform their tariffs accordingly. (*See id.*)

Staff suggests, without providing any underlying draft language, that if difficulty and/or cost of implementation are still an issue, the RES (instead of the electric utility) could "have the responsibility to inform small commercial customers of the ten-calendar day rescission window." (Staff Reply Comments at 11.) Generally speaking, and without knowing the details surrounding Staff's suggestion, ICEA would be opposed to any additional separate mailing being sent out by suppliers regarding the ten-calendar day rescission window. ICEA notes that suppliers would have already supplied customers with notification of the rescission window in the Uniform Disclosure Statement per proposed Section 412.110(j). ICEA also notes that if, for purposes of complying with this requirement, the electric utilities find it difficult and/or costly under their existing systems to automatically recognize a small commercial account versus a larger commercial account when they receive an enrollment request then a possible alternative might simply be to mail out the required rescission information to the larger group. Presumably, the mailing could be worded as such to clearly state that the rescission information only applies to small commercial customers with annual usage under 15,000 kWh.

D. Elimination of Fixed Monthly Bill Products and Mandatory per kWh Pricing

ICEA agrees with Staff that the CUB/AG proposals to eliminate fixed monthly bill products and to require mandatory per kWh pricing should be rejected. (*See* Staff Reply Comments at 19-21.) For additional arguments, please also see ICEA's Reply Comments at 4-6.

E. Proposed Additional Door-to-Door Requirements

ICEA agrees with Staff that all of Dominion Retail's proposed additional door-to-door requirements should be rejected. For additional arguments, please see ICEA's Reply Comments at 15-18.

F. Proposed Additional Telephone Solicitation Requirements

CUB/AG suggest that the first disclosure made by a RES's telephone solicitation agent should be that the agent does not work for the local utility, governmental office or consumer organization. (*See* CUB/AG Reply at 8.) CUB/AG further suggest that the "restriction on implying that the employee works on behalf of the local utility's choice program" be applied to RES telephone solicitation practices as well. (*Id.*) ICEA is unaware of any other similar or equivalent requirement or mandate that is imposed upon other commercial entities that are regulated by the Commission. In any event, ICEA believes that both concerns are sufficiently addressed by proposed Section 412.110(k) Uniform Disclosure Statement ("A statement that the RES is an independent seller of power and energy serviced certified by the Commission, and that the sales agent is not representing or acting on behalf of the electric utility, governmental bodies, or consumer groups.")

G. 45-Day Future Enrollment Limit

Staff notes that it "is not fundamentally opposed to exploring the option of expanding" the electric utilities' 45-day future enrollment limit but that "it would seem unwise to simply change

the 45-day limit in this docket without exploring the consequences of such a change." (Staff Reply Comments at 34.)

Staff further notes:

If the 45-day future enrollment limit does indeed get changed at some point, the current provision regarding the start of the rescission period can still be consistent with such a change. As long as the electric utility *accepts* an enrollment request for a start date that is further than 45-days into the future, the requirement that the customer be able to rescind the agreement "within ten calendar days after the electric utility's acceptance of the enrollment request" would not have to be changed to accommodate forward start dates.

(*Id.*) (Emphasis supplied.)

ICEA would not be opposed in some future workshop process to exploring the acceptance by electric utilities of enrollment requests that are further than 45 days into the future. ICEA also notes that according to ComEd:

In practice, if a customer's meter read date is at the end of a month, the enrollment request could be submitted up to 75 days prior to the switch and, on average, the forward switching request period is 60 days.

(ComEd Verified Reply Comments at 4.)

H. Training of Sales Agents -- Section 412.170(a), (b), and (c)

In its Reply Comments, Staff rejects ICEA's arguments for limiting the applicability of Section 412.170(a),(b), and (c) to RESs who seek to serve residential and small commercial customers. ICEA does not contend, as Staff seems to suggest, that these three provisions are "controversial" or "ground breaking." (Staff Reply Comments at 16.) What ICEA respectfully suggests, for the reasons set forth in its Initial Comments, is that the Commission should be wary of imposing unnecessary requirements into what is a well functioning commercial and industrial retail electricity market place. (See ICEA Initial Comments at 3-4.) (See also IIEC Verified Reply Comments at 1 ("[L]arge industrial companies do not feel the need for such consumer

protections, as they are sophisticated purchasers of electricity with the technical and legal resources they need to protect themselves in the process of purchasing and contracting for electric supply.".)

I. Limitation on a Customer's Right to Terminate Sales Contract Free of Any Early Termination Fee

Staff recommends providing a customer the opportunity to cancel a contract without incurring an early termination fee one time per 12-month period. (*See Staff Reply Comments at 42.*) ICEA concurs with Staff that a limitation might help foreclose the possibility of customer or ABC abuse of this consumer protection measure. However, ICEA believes that Staff's proposed limitation language for Section 412.230 could be improved to provide further clarification. Accordingly, ICEA suggests the following edits to Staff's proposed language:

Section 412.230 Early Termination of Sales Contract

Any agreement between a RES and a customer that contains an early termination fee shall disclose the amount of the early termination fee or the formula used to calculate the termination fee. Any agreement that contains an early termination fee shall provide the customer the opportunity to contact the RES to terminate the agreement without any termination fee or penalty within 10 business days after the date of the first bill issued to the customer for products or services provided by the RES ~~one time per 12-month period.~~ A customer relying on this provision to avoid an early termination fee shall be precluded from relying upon this provision for 12 months following the date the customer terminated his or her sales contract. The agreement shall disclose the opportunity and provide a toll-free phone number that the customer may call in order to terminate the agreement. This requirement does not relieve the customer of obligations to pay for services rendered under the agreement until service is terminated.

J. Complaint Reporting

ICEA agrees with Staff that the Commission should not attempt to specify a precise method of displaying customer complaints in this rule. (*See Staff Reply Comments at 50.*) ICEA generally agrees with Staff that the Commission should "maintain the flexibility to employ any method [of displaying customer complaints] it believes would be appropriate based on the nature

of the date it receives and the purpose of the data." (*Id.*) ICEA respectfully requests that the supplier and governmental and consumer advocate community have the opportunity to help formulate an appropriate complaint reporting format for use in Illinois via the ORMD workshop process, or at the very least, review and comment upon Staff's preferred complaint reporting format prior to its use with real data. As ICEA noted in its Reply Comments, any complaint reporting provided to consumers regarding ARESs be conducted and presented in a similar fashion as that provided by the Commission to consumers regarding AGSs.² (*See* ICEA Reply Comments at 19.)

K. Notice of Solicitation

Staff proposes changes to Section 412.310(a) whereby certain information would be provided to Staff "[p]rior to the RES initiation marketing to residential and small commercial customers . . ." See Staff Reply Comments, Corrected Attachment A, Section 412.310.

RESA notes in their reply comments that:

[I]t is not clear what would constitute "initiating a marketing and solicitation program" to CSD or the Commission. RESA presumes that such notice would be required after receiving ARES certification from the Commission and prior to enrolling the first customer. Once a RES states it is operational and active in the market, no further notification should be necessary."

(RESA Reply Comments at 11.)

ICEA agrees with RESA and respectfully suggests that 412.310(a) be amended to read: "[p]rior to the RES initiation marketing to residential and small commercial customers for the first time under its certificate of service authority, the RES shall provide . . ."

² Section 19-125(d) of the Act requires that "[t]he Commission shall maintain a summary by category and provider of all formal and informal complaints it receives pursuant to this Section, and it shall publish the summary on a quarterly basis on its World Wide Web site. Individual customer information shall not be included in the summary." (220 ILCS 5/19-125(d).)

L. Section 412.310(c) Required RES Information, Past Force Majeure Events

In its Reply Comments, Staff properly rejects a proposal by CUB/AG to include disclosure of force majeure events to consumers as part of the Uniform Disclosure Statement. (*See* Staff Reply Comments at 22-23.) However, Staff agrees with CUB/AG that "the Commission may benefit from this information provided by RESs" and recommends the addition of the following language to Section 412.310 Required RES Information:

c) If the RES has declared force majeure within the past ten years on any contracts to deliver power and energy services, the RES shall provide notice to the Commission Staff prior to marketing to residential and small commercial customers.

(*Id.* at 23.)

ICEA concurs with Staff that the CUB/AG proposal with regard to force majeure is "ill advised." (*Id.* at 22.) With regard to Staff's proposed language, since the section within which the language is being placed is concerned with marketing to residential and small commercial customers, ICEA suggests that the request for force majeure information be likewise limited.

Accordingly, ICEA recommends that the language be revised as follows:

c) If the RES has declared force majeure within the past ten years on any contracts to deliver power and energy services to residential and small commercial customers, the RES shall provide notice to the Commission Staff prior to marketing to residential and small commercial customers.

CONCLUSION

ICEA's recommendations in response to parties' Initial and Reply Comments appropriately balance the need for adequate consumer protections with the equally important goal of preserving and developing retail market competition.

WHEREFORE, ICEA respectfully requests that the Commission modify Part 412 and Part 453 in accordance with the foregoing Surreply Comments.

Respectfully Submitted,

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STATE OF ILLINOIS)
) SS
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VERIFICATION

Christopher N. Skey, being first duly sworn, on oath deposes and says that he is one of the attorneys for the Illinois Competitive Energy Association; that he has read the above and foregoing document, knows of the contents thereof, and that the same is true to the best of his knowledge, information, and belief.

Christopher N. Skey

Subscribed and sworn to me
this ____ day of June 2010.
